

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

22-543

SAP Number

Public Works

Department Contract Representative	<u>Brad Ter Keurst</u>
Telephone Number	<u>909-387-8094</u>
Contractor	<u>Microsoft, Inc.</u>
Contractor Representative	<u></u>
Telephone Number	<u></u>
Contract Term	<u>N/A</u>
Original Contract Amount	<u>N/A</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>N/A</u>
Cost Center	<u>6703004250</u>

Briefly describe the general nature of the contract:

Microsoft Software License Terms for Microsoft Dynamics is for the database that interconnects and resides on the SQL server. The MS SQL databases need to be upgraded to a newer SQL version to prevent the compromise of data security and integrity after the lifecycle ends.

FOR COUNTY USE ONLY

Approved as to Legal Form

SEE ATTACHED

Jolena Grider, County Counsel

Date

Reviewed for Contract Compliance

Andy Silao
Andy Silao, P.E.

Date

6/22/2022

Reviewed/Approved by Department

Brendon Biggs
Brendon Biggs, Director

Date

6/22/22

MICROSOFT SOFTWARE LICENSE TERMS

MICROSOFT DYNAMICS SL 2018

These license terms are an agreement between Microsoft Corporation (or based on where you are located, one of its affiliates) and you. Please read them. They apply to the software named above, which includes the media on which you received it, if any. The terms also apply to any Microsoft

- updates,
- supplements,
- Internet-based services, and
- support services

for this software, unless other terms accompany those items. If so, those terms apply. **These license terms supersede the license terms embedded in the software.**

By installing, having installed, or using the software, you accept these terms. If you do not accept them, do not install, have installed or use the software.

If you comply with these license terms, you have the rights below.

1. OVERVIEW.

a. Software. The software may include

- server software;
- client software that can be installed on devices and/or used with the server software;
- additional ERP components that may be separately licensed; and
- any updates or supplements for the software.

b. License Model. The software is licensed based on

- the number of copies of ERP solution that you install on premises or use on a hosted basis;
- the number of your users or devices that access the ERP solution; and
- additional ERP components you license.

2. DEFINITIONS.

- **“affiliate”** means any legal entity that directly or indirectly owns, is directly or indirectly owned by, or that is directly or indirectly under common ownership with a party to this agreement.
- **“business process outsourcing”** means the contracting of a specific critical or non-critical business task, function or process to a third-party service provider, where the services provided include direct or indirect access to the software.
- **“client software”** means the components of the software that allow a device to access or use the server software or to use certain aspects of the server software.
- **“device”** means a single personal computer, workstation, terminal, handheld computer, mobile phone, personal digital assistant, or other electronic device.
- **“direct access”** occurs when any user logs on to the software through a Microsoft Dynamics client.
- **“ERP”** means enterprise resource planning.
- **“ERP solution”** means the components of the software that control your users and financial reporting units.

- **“Instance”** means an image of software that is created by executing the software’s setup or install procedure or by duplicating an existing Instance.
- **“internal business purposes”** means managing your business, but not that of an independent third party.
- **“Light User”** means a named user who access your ERP solution indirectly for purposes of using a limited set of services or functionality.
- **“limited device”** means a single-purpose device, used by any user, to access your ERP solution indirectly for either capturing or displaying data.
- **“operating system environment” or “OSE”** means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system Instance or parts identified above. There are two types of OSEs, physical and virtual. A physical hardware system can have one Physical OSE and/or one or more Virtual OSEs.
- **“ownership”** means more than 50% ownership.
- **“partner”** means the entity that has signed a channel partner agreement with Microsoft authorizing it to market and distribute the software.
- **“physical OSE”** means an OSE that is configured to run directly on a physical hardware system. The operating system Instance used to run hardware virtualization software (e.g. Microsoft Hyper-V Server or similar technologies) or to provide hardware virtualization services (e.g. Microsoft virtualization technology or similar technologies) is considered part of the Physical OSE.
- **“server”** means a physical hardware system capable of running server software.
- **“Server Farm”** means a single data center or two data centers each physically located:
 - in a time zone that is within four hours of the local time zone of the other (Coordinated Universal Time (UTC) and not DST), and/or
 - within the European Union (EU) and/or European Free Trade Association (EFTA).
- **“server software”** means the components of the software that provides services or functionality on your server.
- **“virtual OSE”** means an OSE that is configured to run on a virtual hardware system.
- **“third party users”** are users that are not your or your affiliates’ employees, contractors or agents.
- **“you”** means the legal entity that has agreed to this agreement, your affiliates, and each of your, and your affiliates’, employees, contractors, agents and suppliers.

3. INSTALLATION AND USE RIGHTS.

- Server Software.** You must purchase a server software license to use the server software. You may install an unlimited number of copies of the server software to access your ERP solution. However, you may only use the number of copies that your license key permits.
- Client Software.** You may only use the client software with the ERP solution. You may install an unlimited number of copies of the client software to access your ERP solution. The client software may be used only by the number of licensed users that your license key permits.
- Additional Components.** If additional ERP components are available to you, you must obtain a separate license for each ERP solution if you wish to run an additional ERP component for multiple ERP solutions. **For additional information and license restrictions regarding additional components, see** <http://www.microsoft.com/en-us/dynamics/erp-buy-sl-software.aspx>.

4. ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS.

a. **User Licenses.** In addition to the server software license, you must acquire user licenses for the total number of users that access the ERP solution directly or indirectly, including through third party applications. User licenses are specific to an ERP solution and may not be used with or shared among different ERP solutions. The types of user licenses are:

- “Concurrent users” are licenses that allow any user to access the ERP solution. The number of concurrent users licensed refers to the maximum number of users that may access the ERP solution simultaneously;
- “Named users” are licenses that are specific to each user and may not be shared with other users. You may permanently reassign your named user from one user to another. You may temporarily reassign your named user to a temporary user while the permanent user is absent;
- “Device Client Access Licenses” or “Device CAL” are licenses that permit one limited device, used by any user, to access the ERP solution indirectly. You may permanently reassign your device CAL from one device to another, as long as the new device complies with the limitations applicable to limited devices;
- “External Connector” is a license that allows any number of third party user to access a single ERP solution. You must assign each external connector license you acquire to a single ERP solution. You do not need concurrent users, named users or device CAL licenses for those users.

For additional information about the types of user licenses and the license restrictions regarding user licenses, see <http://www.microsoft.com/en-us/dynamics/erp-buy-sl-software.aspx>.

b. **Multiplexing.** Multiplexing (sometimes referred to as “pooling”) is a manner of indirect hardware or software access (“indirect access”) that

- pools connections,
- reroutes information,
- reduces the number of devices or users that directly access or use the software, or
- reduces the number of devices or users the software directly manages,

Any user accessing the ERP Solution through a multiplexed connection must be appropriately licensed with a user license.

c. **Business Process Outsourcing.** You may not use the software to provide business process outsourcing services to your clients or customers. You may however make your Access Licenses available to business process outsourcers acting on your behalf and providing services to your business.

d. **License Mobility and Outsourcing Software Management.**

- **License Mobility.** You may reassign your ERP solution licenses, for which you are under a current maintenance plan, to (i) any servers running physical or virtual OSEs dedicated to you and located within the same Server Farm as often as needed, or (ii) from one Server Farm to another, but not on a short-term basis (i.e., not within 90 days of the last assignment).
- **Outsourcing Software Management.** You may install and use permitted copies of the software on servers and other devices that are under the day-to-day management and control of third parties, provided all such servers and other devices are and remain fully dedicated to your use. You are responsible for all of the obligations under your licensing agreement regardless of the physical location of the hardware upon which the software is used.

e. **License Grant for Templates.** You may copy and use templates provided with the software and identified for such use in documents and projects that you create. You may distribute those documents and projects non-commercially.

f. **Restrictions related to the use of Crystal Reports.** If Crystal Reports Runtime Server is included in the software, you may not distribute the Crystal Reports Runtime Server component of the software (the “Runtime Component”) with any general-purpose report writing, data analysis or report delivery product or

any other product that performs the same or similar functions as the Runtime Component. You may not use the Runtime Component to create for distribution a product that is generally competitive with Business Objects product offerings. You may not use the Runtime Component to create for distribution a product that converts the report file (.RPT) format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of Business Objects.

- g. Modification Disclaimer.** You may modify the software only as necessary to use it for your internal business purposes if you received it in source code form or you or any third party acting on your behalf have licensed tools from Microsoft that allow you or that third party acting on your behalf to modify the object code form. You agree that Microsoft is not responsible for any problems that result from modifications made by you, a partner, or any other third party acting on your behalf, or any problems that are caused by third party hardware or software. Microsoft does not, and will not have any obligation to, provide technical or other support for any modifications made by you, a partner or any other third party. Microsoft does not make any representation, endorsement, guaranty or assurance of the suitability of the software for your business, the suitability of the partner or any other third party to create modifications or to implement the modifications or the software, or that any modification created, implemented, supported and/or serviced by, for or on behalf of you or any third party will meet your business needs or operate successfully with the software. Microsoft and its partners are independent entities and Microsoft is not liable for nor bound by any acts of such business partners.
 - h. Complex Software.** The software is complex computer software. Its performance will vary depending on your hardware platform, software interactions, the configuration of the software and other factors. The software is neither fault tolerant nor free from errors, conflicts or interruptions.
 - i. Third Party Notices.** The software may include third party material (i.e., code or documentation) that Microsoft licenses to you under this agreement. Notices, if any, for the third party material are included for your information only.
 - j. Additional Functionality.** Microsoft may provide additional functionality for the software. Other license terms and fees may apply.
- 5. INTERNET-BASED SERVICES.** Microsoft provides Internet-based services with the software. Microsoft may change or cancel them at any time.
- a. Consent for Internet-Based Services.** Certain features in the software may connect to Microsoft or third party service provider computer systems over the Internet. In some cases, you will not receive a separate notice when they connect. You may switch off these features or not use them. For more information about these features, see the software documentation. **By using these features, you consent to the transmission of this information.**
 - b. Computer Information.** Certain features in the software use Internet protocols, which send to the appropriate systems computer information, such as your Internet protocol address, the type of operating system, browser, name and version of the software you are using, and the language code of the device where you installed the software. Microsoft uses this information to make the Internet-based services available to you. Some of these features include, but are not limited to,

 - **Web Content Features.** Features in the software can retrieve related content from Microsoft and provide it to you. To provide the content, these features send to Microsoft the type of operating system, name and version of the software you are using, type of browser and language code of the device where you installed the software. Examples of these features are clip art, templates, online training, online assistance and Appshelp. You may choose not to use these web content features.
 - c. Use of Information.** Microsoft may use the device information, error reports, and malware reports to improve our software and services. We may also share it with others, such as hardware and software vendors. They may use the information to improve how their products run with Microsoft software.
 - d. Misuse of Internet-based Services.** You may not use these services in any way that could harm them or impair anyone else's use of them. You may not use the services to try to gain unauthorized access to any service, data, account or network by any means.

6. **PRODUCT / LICENSE KEYS.** The software requires a key to run or access it. A key may only be used to run or access the particular version of the software it was issued for. You are responsible for the use of keys assigned to you. You must not duplicate or share the keys with third parties.
7. **BENCHMARK TESTING.** You must obtain Microsoft's prior written approval to disclose to a third party the results of any benchmark test of the software.
8. **SCOPE OF LICENSE.** The software is licensed, not sold. This agreement only gives you some rights to use the software. Microsoft reserves all other rights. Unless applicable law or a separate written contract with Microsoft gives you more rights despite this limitation, you may use the software only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. You may only use the software for your internal business purposes. You may not
 - work around any technical limitations in the software;
 - reverse engineer, decompile or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
 - make more copies of the software than specified in this agreement or allowed by applicable law, despite this limitation;
 - publish the software for others to copy;
 - rent, lease or lend the software; or
 - use the software for commercial software hosting services.

Your rights to use the software are perpetual but may be revoked if you or your affiliates do not comply with the terms of this agreement. Rights to access the server software do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access the server.

9. **BACKUP COPY.** You may make multiple copies of the software for backup, development and testing purposes, so long as such copies are not used in production and the development is for your internal use only. Your backup copies may be hosted by a third party on your behalf as provided in Section 4.d.
10. **FAIL-OVER RIGHTS.** In addition to your use of the software under Section 3 above, you may run a single passive fail-over of your ERP solution that will only be used or accessed for temporary support when the primary ERP solution is unavailable.
11. **LICENSE TRANSFER.** You may not transfer the software without Microsoft's prior written consent. If permitted, there may be additional charges for transferring the software to a third party.
12. **DOCUMENTATION.** Any person that has valid access to your computer or internal network may copy and use the documentation for your internal, reference purposes.
13. **DOWNGRADE.** Instead of installing the software, you may install and use an earlier version. This agreement applies to your use of the earlier version. If the earlier version includes different components, any terms for those components in the agreement that comes with the earlier version apply to your use of them. Microsoft is not obligated to supply earlier versions to you. At any time, you may replace an earlier version with this version of the software.
14. **EXPORT RESTRICTIONS.** The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users and end use. For additional information, see www.microsoft.com/exporting.
15. **SUPPORT SERVICES.** Microsoft provides support services for the software as described at <http://www.microsoft.com/dynamics/customer/en-us/service-plans.aspx>.
16. **ENTIRE AGREEMENT.** This agreement (including the warranty below), and the terms for supplements, updates, Internet-based services and support services that you use, are the entire agreement for the software and support services.

17. APPLICABLE LAW.

- a. **United States.** If you acquired the software in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you are located govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.
- b. **Outside the United States.** If you acquired the software in any other country, the laws of that country apply.
- c. **Attorneys' Fees and Costs.** If you or Microsoft files a lawsuit, brings an action or otherwise pursues a claim against the other in connection with or arising out of this agreement or the software, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses (including any appeal).

18. LEGAL EFFECT. This agreement describes certain legal rights. You may have other rights under the laws of your state or country. You may also have rights with respect to the party from whom you acquired the software. This agreement does not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.

19. DEFENSE OF INFRINGEMENT AND MISAPPROPRIATION CLAIMS. Microsoft will defend you against any claims made by an unaffiliated third party that the software infringes its patent, copyright or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents).

You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim, and Microsoft will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act, except in the case of claims arising outside the United States, in which case "misappropriation" will mean intentionally unlawful use and "trade secret" will mean "undisclosed information" as specified in Article 39.2 of the TRIPs agreement.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) your use of the software after Microsoft notifies you to discontinue use due to such a claim; (ii) your combining the software with a non-Microsoft product, data or business process including third party add-ons or programs; (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process; (iv) your altering or modifying the software, including any modifications by third parties; (v) your distribution of the software to, or its use for the benefit of, any third party; (vi) your use of Microsoft trademark(s) without express written consent to do so; or (vii) for any trade secret claim, your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than Microsoft or its affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. You will reimburse us for any costs or damages that result from these actions.

If Microsoft receives information concerning an infringement or misappropriation claim related to the software, Microsoft may, at its expense and without obligation to do so, either (i) procure for you the right to continue to run the software, or (ii) modify the software or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the software immediately. If, as a result of an infringement or misappropriation claim, your use of the software is enjoined by a court of competent jurisdiction, Microsoft will, at its option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate this license.

If any other type of third party claim is brought against you regarding Microsoft's intellectual property, you must notify us promptly in writing. Microsoft may, at its option, choose to treat these claims as being covered by this section. This Section 20 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

20. LIMITATION ON AND EXCLUSION OF DAMAGES. You can recover from Microsoft and its suppliers only direct damages up to the amount you paid for the software except for claims covered by Section 20. You cannot recover any other damages, including consequential, lost profits, special, indirect or incidental damages.

This limitation applies to

- anything related to the: (i) software, (ii) services, (iii) content (including code) on any third party Internet sites, or (iv) third party programs; and
- claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, loss of data, damage to records or data, loss of goodwill, loss as a consequence of a business interruption or any other tort to the extent permitted by applicable law.

It also applies even if

- repair, replacement or a refund for the software does not fully compensate you for any losses; or
- Microsoft knew or should have known about the possibility of the damages.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. They also may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential or other damages.

21. VERIFYING COMPLIANCE.

- a. Right to verify compliance.** You are required to keep records (including proof of purchase) relating to the software you use under this agreement. Microsoft has the right to verify compliance with this agreement, at Microsoft's expense. You agree to provide reasonable cooperation in the event of a compliance audit, including by allowing Microsoft, on request, to access the usage report as a tool in conducting the audit.
- b. Verification process and limitations.** To verify compliance with the terms of this Agreement, Microsoft will engage an independent accountant from an internationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days' notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, Microsoft can require you to complete Microsoft's self-audit questionnaire relating to the software you use under this agreement but reserves the right to use a verification process as set out above.
- c. Verification frequency.** If Microsoft undertakes verification and does not find material unlicensed use (license shortage of 5% or more), then Microsoft will not undertake another verification of the same entity for at least one year.
- d. Use of Results.** Microsoft and Microsoft's auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether you are in compliance with the terms of this agreement. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.
- e. Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, you must promptly order sufficient licenses to cover your use. If material unlicensed use is found, you must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional licenses at single retail license cost within 30 days.

LIMITED WARRANTY

- A. LIMITED WARRANTY.** If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.
- References to “limited warranty” are references to the express warranty provided by Microsoft. This warranty is given in addition to other rights and remedies you may have under law, including your rights and remedies in accordance with the statutory guarantees under local Consumer Law.
- B. TERM OF WARRANTY; WARRANTY RECIPIENT; LENGTH OF ANY IMPLIED WARRANTIES.** **The limited warranty covers the software for one year after acquired by you. If you receive supplements, updates, or replacement software during that year, they will be covered for the remainder of the warranty or 30 days, whichever is longer.** If the first user transfers the software, the remainder of the warranty will apply to the recipient.
- To the extent permitted by law, any implied warranties, guarantees or conditions last only during the term of the limited warranty.** Some states do not allow limitations on how long an implied warranty lasts, so these limitations may not apply to you. They also might not apply to you because some countries may not allow limitations on how long an implied warranty, guarantee or condition lasts.
- C. EXCLUSIONS FROM WARRANTY.** This warranty does not cover problems caused by your acts (or failures to act), the acts of others, or events beyond Microsoft’s reasonable control.
- D. REMEDY FOR BREACH OF WARRANTY.** **Microsoft will repair or replace the software at no charge. If Microsoft cannot repair or replace it, Microsoft will refund up to the amount your partner paid for the software to Microsoft. It will also repair or replace supplements, updates and replacement software at no charge. If Microsoft cannot repair or replace them, it will refund up to the amount Microsoft charged for them, if any. You must uninstall the software and return any media and other associated materials to Microsoft with proof of purchase to obtain a refund. These are your only remedies for breach of the limited warranty.**
- E. CONSUMER RIGHTS NOT AFFECTED.** **You may have additional consumer rights under your local laws, which this agreement cannot change.**
- F. WARRANTY PROCEDURES.** You need proof of purchase for warranty service.
- 1. United States and Canada.** For warranty service or information about how to obtain a refund for software acquired in the United States and Canada, contact Microsoft at
 - (800) MICROSOFT; or
 - Microsoft Customer Service and Support, One Microsoft Way, Redmond, WA 98052-6399; or
 - visit www.microsoft.com/info/nareturns.htm.
 - 2. Europe, Middle East and Africa.** If you acquired the software in Europe, the Middle East or Africa, Microsoft Ireland Operations Limited makes this limited warranty. To make a claim under this warranty, you should contact either
 - Microsoft Ireland Operations Limited, Customer Care Centre, Atrium Building Block B, Carmanhall Road, Sandyford Industrial Estate, Dublin 18, Ireland; or
 - the Microsoft affiliate serving your country (see www.microsoft.com/worldwide).
 - 3. Australia.** If you acquired the software in Australia, contact Microsoft to make a claim at
 - 13 20 58; or
 - Microsoft Pty Ltd, 1 Epping Road, North Ryde NSW 2113, Australia.

4. Outside United States, Canada, Europe, Middle East and Africa. If you acquired the software outside the United States, Canada, Europe, the Middle East and Africa, contact the Microsoft affiliate serving your country (see www.microsoft.com/worldwide).

G. NO OTHER WARRANTIES. The limited warranty is the only direct warranty from Microsoft. Microsoft gives no other express warranties, guarantees or conditions. Where allowed by your local laws, Microsoft excludes implied warranties of merchantability, fitness for a particular purpose and non-infringement. If your local laws give you any implied warranties, guarantees or conditions, despite this exclusion, your remedies are described in the Remedy for Breach of Warranty clause above, to the extent permitted by your local laws.

FOR AUSTRALIA ONLY. In this paragraph, "goods" refers to the software for which Microsoft provides the express warranty. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Goods presented for repair may be replaced by refurbished goods of the same type rather than being replaced. Refurbished parts may be used to repair the goods

H. LIMITATION ON AND EXCLUSION OF DAMAGES FOR BREACH OF WARRANTY. The Limitation on and Exclusion of Damages clause above applies to breaches of this limited warranty.

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state. You may also have other rights which vary from country to country.